

**STATE BOARD OF EQUALIZATION**

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Executive Director

March 26, 1998

Dear Mr. :

This is to respond to your letter of January 28, 1998 to Larry Augusta of the Board of Equalization Legal Staff, requesting our opinion on the propriety of an appeal following a 1997 audit of the books and records of _____ for the 1994, 1995, 1996, and 1997 tax years. You inform us that the result of the audit "was a 'no change' and we disagree and want a hearing to discuss equipment valuations." You enclosed with your letter, a copy of the Audit Narrative relative to the above audit, in which it is reported under the heading "Audit Differences:" "No differences were found. I have performed a sample audit of the 1997 lien date, and found no changes to reported costs. Therefore, I am accepting all years as reported."

Your office filed "escape appeals" within the 60-day period required by statute, and it requested a hearing "to determine the correct value of the assets under audit". You ask us to conclude that your client is entitled to a hearing in this case.

To the contrary, it is our opinion that your client is not entitled to review, equalization, and adjustment by the county board of equalization under the facts set forth above because no property was disclosed to be "subject to an escape assessment" by virtue of the described audit.

As you point out in your letter, the fourth paragraph of Section 469 of the Revenue and Taxation Code provides:

"If the result of an audit for any year discloses property subject to an escape assessment, then the original assessment of all property of the assessee at the location of the profession, trade, or business for that year shall be subject to review, equalization and adjustment by the county board of equalization or assessment appeals board pursuant to Chapter 1 (commencing with Section 1601) of Part 3 of this division, except in those instances when the property had previously been equalized for the year in question."

Similarly, Revenue and Taxation Code Section 1605, subdivision (e) provides:

(e) "If an audit of the books and records of any profession, trade, or business pursuant to Section 469 discloses property subject to an escaped assessment for any year, then the original assessment of all property of the assessee at the location of the profession, trade, or business for that year shall be subject to review, equalization and adjustment by the county board of equalization or assessment appeals board pursuant to this chapter, except in those instances when that property had previously been equalized for the year in question by the county board of equalization or assessment appeals board. The application shall be filed with the clerk no later than 60 days after the date on which the assessee was notified. Receipt by the assessee of a tax bill based upon that assessment shall suffice as that notice."

Thus, the determining factor under the facts as you relate then is: Did the audit disclose property subject to an escape assessment? If not, a necessary prerequisite to the right to a post-audit equalization hearing pursuant to these code sections would be absent. It seems plain that the audit here did not disclose property subject to an escape assessment.

The Deputy County Assessor stated in his Audit Narrative that he had done a sample audit, that he had found no changes to reported costs, and that "Therefore, I am accepting all years as reported." Thus, it is clear that the audit did not disclose property which had escaped assessment by having been unassessed or assessed at a value lower than its actual value on the lien date. Since no property was thus disclosed to be "subject to an escape assessment," the appeal rights set forth in the above sections are not triggered. The auditor accepted the previous assessments based upon the taxpayer's reported costs; any appeal rights from those assessments would flow from Revenue and Taxation Code Section 1603 in the year or years of those assessments.

We, of course, are familiar with your argument, based upon this Board's Letter to Assessors No. 84/38, that a taxpayer has appellate rights under Sections 469 and 1605, even, as here, when the assessor does not actually enroll an escape assessment. However, the facts in this case are much different than the facts which support LTA 84/38, and a different conclusion must result.

In LTA 84/38, the issue was described as follows:

Frequently, an assessor's audit discloses both under- and overassessments. Section 533 provides in such cases that the appropriate tax liabilities and refunds shall be offset, so the resulting tax bill or refund is a net figure. If the refund is greater than or equal to the escape, then no "escape assessment" is enrolled, and there is a question as to whether the taxpayer is entitled to an equalization hearing under Sections 469 and 1605.

We concluded:

The critical phrase (in the third paragraph of Section 469, and also in the fourth paragraph of Section 1605) is "property subject to an escape assessment". That language does not specify that an escape assessment must be enrolled, only that the audit disclosed property that should have been assessed but was not. It would be a tortured reading of the law to conclude that property is not "subject to an escape assessment" merely because some other error offset the escape.

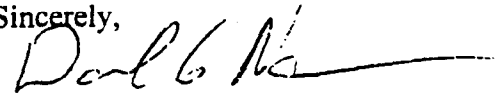
Thus, in LTA 84/38, there was some property which was found to be underassessed and therefore "subject to an escape assessment." In contrast, here the assessor did not find any property underassessed or overassessed. No escape assessment was enrolled in this case not because underassessed properties were "netted" against overassessed properties, but because the assessor found no changes and thus, accepted the prior assessments.

Property is subject to an "escape assessment" for a variety of reasons. See Revenue and Taxation Code Sections 531- 538. However, central to this concept is that the property was either not assessed at all, or assessed at a value lower than its actual value on the lien date. See Sections 531, 531.3, 531.4, 532. Again, no such property was disclosed in the audit of . Therefore, the audit triggered no right to review, equalization, and adjustment by the county board of equalization pursuant to Sections 469 or 1605.

You state in your letter that the taxpayer disagrees with the Assessor that "no differences were found," and that the assessor *should have* found an underassessment of a piece of medical equipment. This is in substance the taxpayer disagreeing with its own representations on its property statement, declared to be true under the penalty of perjury, which is not a recognized method of extending the assessment appeals time limitations of Section 1603. The assessor may rely upon information supplied by the taxpayer. The critical fact is that the assessor *did not* find unassessed or underassessed property in the subject audit. The taxpayer's post-filing change of thought does not change this.

The views expressed in this letter are advisory only; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,



Daniel G. Nauman
Tax Counsel

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MAR 30 1998

DEPUTY DIRECTOR
PROPERTY TAXES

DGN:jd

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cc:

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- Ms. Jennifer Willis, MIC:70